

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

Index No.

PATRIA DE LOS SANTOS,

Plaintiff,

-against-

THE CITY OF NEW YORK, POLICE OFFICER
CRAIG MATTHEWS and POLICE OFFICER
ROBERT SINISHTAJ,

Defendants.

VERIFIED COMPLAINT

Plaintiffs, by her attorneys, PEÑA & KAHN, PLLC, complaining of the defendant, all upon information and belief, respectfully states and alleges as follows:

FIRST CAUSE OF ACTION

1. That at all times herein mentioned, the occurrence that gave rise to this action took place in the County, City and State of New York.
2. That at all times herein mentioned, defendant CITY OF NEW YORK (hereinafter referred to as "CITY") was a municipal corporation, duly organized and existing under and by virtue of the laws of the State of New York.
3. That on said date and at all times herein mentioned, defendant CITY operated the New York City Police Department and employed the officers of said department.
4. That on said date and at all times herein mentioned, defendant CITY managed the New York City Police Department and employed the officers of said department.
5. That on said date and at all times herein mentioned, defendant CITY controlled the New York City Police Department and employed the officers of said department.
6. That heretofore and on or about November 15, 2012, and within ninety (90) days after the claim herein sued upon arose, the plaintiff (then claimant) caused a

Notice of Claim, in writing, sworn to by or on behalf of the plaintiff (then claimant) to be served upon the defendant, which said Notice of Claim set forth the name and post office address of the plaintiff (then claimant), the name of their attorneys, the nature of the claim, the time when, the place where and the manner in which the claim arose, and the items of damages or injuries claimed to have been sustained so far as then practicable.

7. That at least thirty (30) days have elapsed prior to the commencement of this action since the service of the said Notice of Claim as aforesaid, and adjustment and payment thereof has been neglected and/or refused by the defendant.
8. That a hearing of this claim has been held, pursuant to General Municipal Law § 50-h.
9. That this action is commenced within one (1) and ninety (90) days year after the happening of the event upon which the claim herein sued upon arose.
10. That on August 24, 2012, defendant POLICE OFFICER CRAIG MATTHEWS (hereinafter "MATTHEWS") was employed by defendant CITY as an officer of the New York City Police Department.
11. That on August 24, 2012, defendant POLICE OFFICER ROBERT SINISHTAJ (hereinafter "SINISHTAJ") was employed by defendant CITY as an officer of the New York City Police Department.
12. That at all relevant times herein mentioned, the plaintiff was a lawful pedestrian.
13. That on or about August 24, 2012, defendants MATTHEWS and SINISHTAJ did negligently discharge their firearms at or about the intersection of 5th Avenue and

34th Street, New York, New York, and in front of the premises commonly known as the Empire State Building.

14. That at said time and place, the plaintiff, an innocent bystander, was caused to be struck by bullet(s), thereby suffering grievous personal injuries and attendant special damages by reason of the aforesaid negligently discharged bullets.
15. That the said occurrence and the injuries resulting therefrom and sustained by the infant plaintiff were caused by reason of the negligence and carelessness of the defendants without any fault or negligence on the part of the plaintiff contributing thereto.
16. That on or about said date, the plaintiff would not have been injured in the absence of negligence on the part of the defendants.
17. That on or about said date, defendants MATTHEWS and SINISHTAJ discharged their firearms in violation of New York City Police Department regulations, policies and procedures.
18. That on or about said date, defendants MATTHEWS and SINISHTAJ unnecessarily endangered innocent persons.
19. That on or about said date, defendants MATTHEWS and SINISHTAJ failed to survey their surroundings for innocent persons before discharging their firearms.
20. That on or about said date, defendants MATTHEWS and SINISHTAJ failed to warn innocent persons of their intention to discharge their firearms.
21. That on or about said date, defendants MATTHEWS and SINISHTAJ failed to take the necessary precautions to avoid the happening of the occurrence complained of.

22. That the said occurrence and the injuries resulting therefrom were caused and/or precipitated by reason of the negligence and carelessness of the defendants, their agents, servants and/or employees solely and wholly as a result of the negligence of the defendants herein and without any negligence on the part of the plaintiff contributing thereto.
23. That by reason of the foregoing the plaintiff sustained severe injuries to various parts of plaintiff's body; that plaintiff suffered and will continue to suffer for some time to come great pain and anguish in body and mind; that plaintiff received necessary hospital care and attention for a long period of time; that plaintiff necessarily received and will continue to receive medical treatment and medicines for which expenses have, are and will continue to be incurred; that as a result of the injuries sustained by plaintiff, plaintiff may, in the future, require further hospital and medical care and attention; that plaintiff has been unable to return to plaintiff's usual duties and occupation as plaintiff had theretofore done, and upon information and belief, plaintiff's injuries are permanent, protracted and disabling in nature.
24. That the amount of damages sought by the plaintiff against the defendants in a sum which exceeds the jurisdictional limits of the lower courts of the State of New York as well as attorneys' fees, disbursements and costs in this action.

SECOND CAUSE OF ACTION

25. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraph numbers "1" through "24" as if more fully set forth at length hereinabove.

26. Upon information and belief, the defendant CITY was negligent and careless and failed to exercise reasonable care and diligence in the hiring, training and supervision of defendants MATTHEWS and SINISHTAJ who negligently discharged their firearms on or about said date.
27. Prior to said date, and at all times here mentioned, the defendant CITY failed to perform adequate background investigations and interviews of potential employees, agents and independent contractors; negligently performed investigations and interviews causing the defendant to hire persons who were incompetent, poorly trained, inexperienced, indolent, lazy, immoral, negligent, and reckless.
28. Prior to said date, and at all times here mentioned, the defendant CITY was negligent in that it failed to exercise reasonable care in the retention, hiring and training of its employees, agents, and independent contractors, so that such employees, agents and independent contractors acted in a professional manner.
29. Prior to said date, and at all times here mentioned, the defendant CITY was negligent in that it failed to supervise employees, agents and independent contractors, so that such employees, agents and independent contractors acted in a professional manner.
30. As a result of the foregoing negligence and lack of due care by the defendant CITY, its agents, servants and/or employees, the plaintiff has been damaged in a sum which exceeds the jurisdictional limits of all lower courts of the State of New York.

THIRD CAUSE OF ACTION

31. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraph numbers "1" through "30", as more fully set forth at length herein.
32. That on or about the aforementioned date, time and place, the plaintiff was assaulted and battered by officers of the NYCPD, including defendants MATTHEWS and SINISHTAJ who were acting within the scope of their employment at the time of the assault.
33. As a result of the foregoing assault and battery by the aforesaid officers, the plaintiff has suffered serious, permanent physical and psychological injuries, and has been damaged in a sum which exceeds the jurisdictional limits of all lower courts of the State of New York.

FORTH CAUSE OF ACTION

34. Plaintiff repeats, reiterates and realleges each and every allegation set forth in paragraph numbers "1" through "33" as if more fully set forth at length hereinabove.
35. That the defendant CITY, its servants, agents and/or employees, without lawful authority, without basis in law or fact, without just cause, without fear or damages to their property or persons or the property or persons of others on their property, and without provocation of the plaintiff, did unlawfully discharge firearms at the plaintiff, causing severe personal injuries.
36. That on or about said date, the rights of the plaintiff, under the laws, statutes, rules and regulations of the City and State of New York, the United States Government

and the Constitutions of the United States and State of New York, were violated by the defendant, its agents, servants and/or employees in the following respect:

- a. Plaintiff was assaulted and battered by defendants, their agents, servants and/or employees without just cause or provocation.
- b. Plaintiff was deprived of any rights, privileges or immunities secured by the Constitution and laws of the United States as provided by the Civil Rights Act (42 U.S.C. secs. 1983, et seq.).
- c. Plaintiff was denied her rights to be secure in her person, house, papers and effects against unreasonable searches and seizures.

37. That by reason of the aforesaid violation of their rights by the defendants, their agents, servants and/or employees, the plaintiff was subject to severe and serious physical and psychological harm in being deprived of her rights secured by the Constitution and Laws of the United States.

38. That by reason of the foregoing, plaintiff is entitled to full cost of attorney's fees and cost incurred in prosecuting this action.

39. That by reason of the foregoing, the plaintiff has been damaged in a sum which exceeds the jurisdictional limits of all lower courts of the State of New York, together with said attorney's fees and costs incurred in prosecuting this action.

WHEREFORE, plaintiff demands judgment in each cause of action against the defendants in a sum which exceeds the jurisdictional limits of all lower courts of the State of New York, and in an amount which satisfies diversity jurisdiction of the Federal Courts pursuant to 28 USCA § 1441 and 1331, together with the costs and disbursements of this action.

Dated: Bronx, New York
 April 29, 2013

Yours, etc.

PEÑA & KAHN, PLLC
Attorneys for Plaintiff

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1250 Waters Place, Ste. 901
Bronx, New York 10461
(718) 585-6551
Our File No.: 04872


By: _____


JONATHAN O. MICHAELS

[illegible]

COMPLAINT

Dated: Bronx, New York
April 29, 2013


Jonathan O. Michaels, Esq.

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COUNTY OF NEW YORK

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PATRIA DE LOS SANTOS,

Plaintiff,

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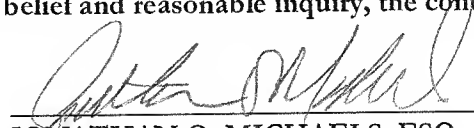
THE CITY OF NEW YORK, POLICE OFFICER CRAIG MATTHEWS and POLICE
OFFICER ROBERT SINISHTAJ,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

PEÑA & KAHN, PLLC
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Pursuant to 22NYCRR 130-1.1, the undersigned, an attorney admitted to practice in the Courts of New York State, certifies that, upon information and belief and reasonable inquiry, the contentions contained in the annexed document are not frivolous


JONATHAN O. MICHAELS, ESQ.
PEÑA & KAHN, PLLC

☐ Notice of Entry

that the within is a (certified) true copy of a
duly entered in the Office of the Clerk of the within named court on

20

☐ Notice of Settlement

that an order
will be presented to the Hon. of which the within is a true copy
one of the judges of the within court at

on 20 at M.

Dated:

Yours, etc.

PEÑA & KAHN, PLLC
1250 Waters Place, Suite 901
Bronx, New York 10461